UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/9/Add.7
9 September 1991

ENGLISH
Original: ARABIC

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

LIBYAN ARAB JAMAHIRIYA

[14 May 1991]

THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

Report on measures taken at the national level to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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GE.91-13657/3724B

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The texts of the relevant provisions of the basic Libyan legislation:

I. A copy of a special edition of the Official Gazette, dated 6 Shawwal 1389 from the death of the Prophet, corresponding to 15 December 1969, containing the text of the Provisional Constitutional Declaration

II. A copy of the Official Gazette, No. 1 of 1977, containing the text of the first announcement of the revolution, the historic address delivered at Zuwarah, the first section of the Green Book entitled "Solution to the Problem of Democracy", and the announcement of the establishment of the people's authority

III. United Nations General Assembly document A/44/331, containing the text of the Great Green Document on Human Rights in the Age of the Masses

IV. The relevant provisions of Libyan criminal legislation

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* These documents received from the Government of the Libyan Arab Jamahiriya may be consulted in the original Arabic in the files of the United Nations Centre for Human Rights.

I. BASIC INFORMATION ON THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

A. Location

1. Libya is situated in central North Africa between latitudes 18° and 23°N and longitudes 9° and 25°E. It is bounded on the east by Egypt and the Sudan, on the west by Tunisia and Algeria and in the south by Chad and the Niger. It has a southern Mediterranean coastline of about 1,800 km and covers a total area of 1,775,500 km^2, which makes it the fourth largest country in Africa after the Sudan, the Congo and Algeria. Its total population in 1990 was estimated at about 3,947,200 persons.

B. The general state of the national economy

2. The national economy has made tremendous achievements in various fields as a result of the exploitation of petroleum resources to implement socio-economic projects in areas relating to agricultural and industrial production, energy and roads, the purpose of which is to help to create an economy based on sectors other than petroleum, which is a diminishing and unstable resource.

3. The world economic crisis that began in the early 1980s had a direct impact on petroleum markets, in which prices dropped to a very low level. Marketing policy, as well as the need to maintain prices and establish ceiling production levels, inevitably caused a further deterioration. All this had a direct effect on the income of the petroleum-exporting countries, including the Socialist People's Libyan Arab Jamahiriya. In 1989, the gross domestic product (GDP) at current income factor cost was estimated at about 7,223.5 million Libyan dinars and the available statistics indicate that the contribution of non-petroleum economic activities to GDP rose from 36.9 per cent in 1970 to 72.9 per cent in 1989, while the contribution of petroleum and natural gas extraction activities decreased from 63.1 per cent in 1970 to about 37.1 per cent in 1989, at current income factor cost.

4. With a view to achieving balanced economic growth in all sectors and regions and establishing a fundamental development base, the national economy was bolstered by fixed investments that amounted to more than 28,429 million dinars during the period from 1970 to 1988.

5. The available statistics indicate that the average per capita cash income in the Socialist People's Libyan Arab Jamahiriya, based on per capita share of GDP, rose from 642 dinars in 1970 to 1,572 dinars in 1989, i.e. an annual compound rate of growth of 4.9 per cent (the Libyan dinar is equivalent to about $US 3.34).

C. An outline of the political system in the Socialist People's Libyan Arab Jamahiriya

6. The first announcement of the revolution, which was made on the morning of 1 September 1969, stated that:

> "Libya is a free and sovereign republic known as the Libyan Arab Republic. It shall follow the path of freedom, unity and social justice and shall guarantee equal rights for its citizens."

7. Article 1 of the Provisional Constitutional Declaration made on 11 December 1969 stipulated as follows:

> "Libya is a free and democratic Arab republic in which sovereignty is exercised by the people. It forms part of the Arab nation and its aim is the achievement of full Arab unity. Its territory is part of Africa and it is known as the Libyan Arab Republic ...".

8. The document announcing the authority of the people, which was promulgated on 28 March 1977, contained the following principles:

(i) The official name of Libya is the "Socialist People's Libyan Arab Jamahiriya";

(ii) The Holy Quran is the social code in the Jamahiriya;

(iii) The authority of the people is the basis of the political system in the Socialist People's Libyan Arab Jamahiriya. Authority belongs solely to the people, by whom it shall be exercised through people's congresses, people's committees, trade unions and federations and professional associations - the General People's Congress - the working procedures of which shall be established by law.

(iv) Defence of the homeland is the responsibility of every citizen and the people shall be trained and armed through general military training. The methods for the development of a military chain of command and the organization of general military training shall be regulated by law.

These principles are explained in greater detail below.

The first principle

9. The official name of Libya is the "Socialist People's Libyan Arab Jamahiriya". "Jamahiriya" means a State run by the people, without a Government. Jamahiriya signifies the direct authority of the people, since the masses govern themselves without choosing persons to govern them. The popular working masses, as such, are synonymous with the people and constitute the quantitative aspect of a concept of which the people constitutes the qualitative aspect. In clearer terms, the Jamahiriya means the State of the Masses which, as such, relies on its natural base in order to ensure justice and equality among the members of its society, since the masses control all the basic requirements for life in society. Social struggle is thereby ended and the Jamahiriya State comes into existence and exercises its sovereignty and freedom through its masses, who are linked together by family, tribal and ethnic interrelationships.

The second principle (the Holy Quran is the social code)

10. The social code derives its origins from two fundamental sources, namely custom and religion, which are the oldest sources in the light of which mankind has elaborated the legal rules by which it is guided. In fact, the

sources of legislation are closely linked to the life of society, the circumstances through which it passes and the basic changes that it undergoes in all spheres of life.

11. It is a well-known historical fact that custom is the oldest natural source of social codes from their inception and throughout their long development phase. Indeed, this source is still tapped even in our present day and age, as can be seen, in particular, from the role that it is currently playing in laying down the foundations of constitutional law and developing the basic principles of public international law.

12. Although custom is one of the oldest legal sources for social codes, religion has played a similar role in highlighting those principles and ensuring that they were respected from the distant ages when religious concepts were first promulgated among social groups in ancient societies until the appearance of the divine and semi-divine religions which provided us with clearly defined legal principles concerning all aspects of life, regardless of the differences or variations in their general provisions or divine teachings. This is because the general rules regulating social conduct are usually similar and frequently identical, quite apart from the monotheistic faith that each of those religions propagates.

13. Since custom was the oldest source of legislation, when the divine religions were revealed they assimilated the good and abolished the bad customs. For example, Islam maintained many of the good customs from the Jahiliya (pre-Islamic) period, while eliminating those that were bad. There are many historical examples of this type, which corroborate the principle that "religion encompasses and assimilates custom". If we have recognized the Holy Quran as the social code in the Socialist People's Libyan Arab Jamahiriya, we have done so in the belief that it is the fundamental and most appropriate source for the formulation of our social code, provided that we view it in an abstract, scientific manner in such a way as to identify its sound provisions in the light of scientific interpretations that are far removed from politically-oriented doctrinaire methods of exegesis.

The third principle

14. The "Jamahiri" system is based on the principle of the authority of the people, including the power to take, monitor and implement decisions. Every citizen is directly involved and it is not permissible, under any circumstances, for one person to act as another's proxy in any matter relating to the formulation of legislation, the exercise of sovereignty or the fulfilment of the national duties incumbent on citizens.

15. The people is divided into basic people's congresses, each of which selects its secretariats. The committees of all the secretariats constitute higher people's congresses. The members of those basic congresses then select people's administrative committees to replace the governmental administration. All of society's facilities are administered through people's committees, accountable to the basic people's congresses which formulate and monitor the implementation of policies. In this way, administration and control are in the hands of the people, i.e. the people controls itself.

16. The Socialist People's Libyan Arab Jamahiriya is divided into seven municipalities, in each of which there are a number of basic people's congresses proportional to the size of the population. In each municipality, a people's specialized administrative committee is chosen, by direct popular acclaim, to implement the decisions and recommendations adopted by the basic people's congresses in all matters relating to political, economic and social affairs falling within the municipality's sphere of jurisdiction. There is also a General People's Committee for the Jamahiriya as a whole, which has the same responsibilities as the people's specialized administrative committees in the municipalities, but at a higher level.

17. Foreign policy matters are handled by a committee, chosen periodically by direct popular acclaim at the General People's Congress, although its powers are confined to the implementation at the country level of the decisions taken by the basic people's congresses.

18. The General People's Congress is composed of the secretaries of the basic people's congresses, the secretaries of the people's congresses at the municipal level, the secretaries of the general people's committees at the country level, and federations, trade unions and professional associations.

The fourth principle (defence of the homeland, i.e. the arming of the people or the concept of the armed people)

19. In addition to being one of the manifestations of force in society, the possession of weapons and the monopolization of their use gives the impression of an unbalanced and inequitable society. Accordingly, the State is normally defined as a political and military organization vested with the sole right to resort to force in order to maintain order and impose respect for the law. In actual fact, orders that are respected, laws that are obeyed and values that are cherished are the values, laws and orders of the persons who control the machinery of government and use it to further their own interests. The State is a vague and intangible entity which we can comprehend and perceive only through the persons who rule us. Consequently, obedience to the law is merely obedience to the rulers.

20. By virtue of the fact that, in Libyan society, the law always reflects social reality, expresses the free and unconcealed will of the people and safeguards the interests of all citizens, no one can monopolize wealth, knowledge or political decision-making. Accordingly, obedience to the law and the maintenance of order imply respect for, and an affirmation of, freedom. In the absence of social conflict and antagonism, and with the appearance of the equitable law of the people, traditional military institutions such as the army and the police fade away and are replaced by the armed people. This is an inevitable consequence inherent in the very nature of the Jamahiri system. No one can act as another person's proxy in bearing arms or dying in defence of freedom. In so far as the concept of the armed people is a means to protect society from the danger of its freedom being stolen by the persons who possess weapons and the ability to use them, it therefore constitutes one of the fundamental pillars of the Jamahiri system.

21. Although Jamahiri society is an armed society, it is not a military society. There is a vast difference between the two; whereas Jamahiri society protects freedom, a military society destroys it. In the former, every individual has the right to be trained in the use of weapons in order to defend freedom and the decisions of the people; in the latter, there is no freedom in so far as privileges are granted by one law and taken away by another. Under the Jamahiri system, every individual creates and protects his rights and needs whereas, under a military system, he has no rights that might conflict with the nature of the military system itself.

D. The basic socio-economic principles in Jamahiri society

22. (a) No individual can acquire a larger share of society's wealth than that which he produces and which is sufficient to satisfy his basic needs without making use of the labour of others.

(b) Liberation of all basic human needs from all manifestations of subjection, dependence and economic exploitation, in keeping with the principle of "freedom in need".

(c) Application of the principle of "partners not hirelings", with all that this implies by way of regulation of production relationships regardless of the identity of the parties involved (the State or individuals). In keeping with this principle, there is no employer/employee relationship but merely a partnership in so far as everyone who contributes to the production process receives a share commensurate with his endeavours. Accordingly, a relationship based on exploitation or dependence, even between labour and the State, is inconceivable since there is no labour, nor is there a strong party and a weak party.

(d) Protection of cultural and social rights through the right to freedom of education, which society grants to all its members. This can be achieved only by portraying everything in its true light, without bigotry.

E. The concept of law in the Socialist People's Libyan Arab Jamahiriya

23. There are two basic conditions for the establishment of law: participation by the masses in the formulation of the law and full equality of all citizens before the law.

1. Collective participation in decision-making and the formulation of the law

24. The legislative authority must not be monopolized by a single group or class; it must be a true and faithful expression of the general will of all the persons to whom the provisions of the law apply. The system of collective participation in decision-making and the formulation of the law is undoubtedly based on the principle of the sovereignty of the people, under which sovereignty in any society belongs to the people as a whole, which must itself exercise that sovereignty without relinquishing it, since that would imply relinquishment of its will.

2. Full equality of all citizens before the law

25. Affirmation of the popular and democratic nature of the law does not merely imply participation by all citizens in its formulation; it also means that those citizens must be equal before the law, particularly from the economic standpoint. If this principle is not respected, any law that is promulgated would be factional in its content although popular in its form.

26. The revolution realized this cogent fact from the outset and established three clearly defined principles as a criterion for democratic rule and popular decision-making: authority, wealth and weapons must be in the hands of the people.

II. THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN THE LIGHT OF LIBYAN LEGISLATION

27. The general legal framework within which the Socialist People's Libyan Arab Jamahiriya has abolished torture consists in the national criminal legislation which prohibits torture and cruel or inhuman treatment and also in the legal safeguards through which the national legal system guarantees the right of any aggrieved person to apply to a court of law for redress in the event of his being unjustly subjected to any inhuman or degrading treatment.

28. The Great Green Document on Human Rights in the Age of the Masses was promulgated on 12 June 1988 as a legislative basis for the definition of this general framework. Its provisions refer to the need to venerate and protect human freedom and prohibit any restrictions thereon, and also to venerate and preserve human life. It further stipulates that the aim of Jamahiri society is to abolish the death penalty and it condemns the repugnant and degrading methods by which executions are carried out in some societies: the use of the electric chair, injections and toxic gases, etc.

29. It should be noted that some of the national legislation is currently being amended in a manner consistent with the provisions of that enlightening document, which will ensure the full implementation of the Convention. Libyan criminal legislation and the Code of Criminal Procedure contain many provisions which prohibit cruel and inhuman treatment and prescribe penalties for any person who misuses his authority. Examples of this can be found in articles 431, 433, 434 and 435 of the Libyan Penal Code and also in articles 444, 445 and 446 of the Code of Criminal Procedure.

30. As already indicated in the preceding section 1, the provisions of the Convention are embodied in a number of our national instruments of criminal legislation, as well as the Code of Criminal Procedure and other relevant laws and legislative acts. Any aggrieved person who has been subjected to any form of cruel, degrading or inhuman treatment has the right to institute proceedings in the national courts in order to obtain redress from the guilty parties.

31. For example, only the People's Court, which was established under the terms of Act No. 5 of 1988, is competent to adjudicate on complaints against measures or decisions that are prejudicial to the freedom and other basic rights of citizens. Article 1 of the above-mentioned Act, under which the

Court was established, specifies the latter's objective as follows: "A court known as the People's Court shall be established in accordance with the provisions of this Act in order to consolidate freedom, redress wrongs, prevent injustice and tyranny and strengthen the foundations of justice and security ...". We have not yet encountered any difficulties that affect the extent to which the Socialist People's Libyan Arab Jamahiriya is fulfilling its obligations under the Convention. Moreover, the initiative taken by the illustrious leader of our revolution in 1988, when he released all the prisoners, granted them a pardon in respect of the political and other offences that they had committed and earnestly called for the demolition and abolition of the prisons, constitutes a major step forward that transcends the aims of the Convention against Torture to include the total abolition of prisons and consideration of other civilized alternatives as set forth in the above-mentioned Great Green Document on Human Rights in the Age of the Masses.

32. Libyan criminal law contains a number of provisions which prescribe the penalties for the use of violence, threats or cruel treatment against any person, and also for unlawful arrest, unjustifiable restriction of freedom and the torture of prisoners.

33. Article 431 stipulates that "Any public official who, in the exercise of his duties, uses violence against a person in such a way as to dishonour him or cause him physical pain shall be punished by detention and a fine not exceeding 150 pounds ...".

34. Article 433 stipulates that "Any public official who arrests a person in a manner that exceeds the limits of his authority shall be punished by detention ...".

35. Article 434 stipulates that "Any public official who, being entrusted with the management of a prison or a place intended for the implementation of preventive measures, admits a person without an order from the competent authorities, refuses to obey their order for his release, or unduly prolongs the duration of the penalty or preventive measure, shall be punished by detention and a fine not exceeding 50 pounds ...".

36. Article 435 of the Penal Code prescribes a severe penalty for any person who tortures, or orders the torture of, accused persons. It stipulates that: "Any public official who personally tortures, or orders the torture of, accused persons shall be punished by a term of imprisonment of three to ten years ...".

37. With regard to article 4 of the Convention, the offences referred to therein are extraditable offences under Libyan legislation and chapter IX of the Libyan Code of Criminal Procedure lays down the rules governing the extradition and return of criminals.

38. Article 493 (a) of the Libyan Code of Criminal Procedure permits the extradition of accused or convicted persons provided that specific conditions are met. For example, the offence committed must not be political or politically motivated and must not affect the political interests of the State or the political rights of any of its citizens. In this connection, Libya has

concluded agreements concerning mutual legal assistance and the extradition of criminals with Bulgaria, Poland, Turkey, Tunisia and Morocco and is a party to international and regional agreements concerning human rights and fundamental freedoms.

III. Safeguards and rights provided for in the Provisional Constitutional Declaration and the Great Green Document on Human Rights in the Age of the Masses

39. Articles 30, 31 and 32 of the Provisional Constitutional Declaration stipulate as follows:

> "Everyone has the right of recourse to the courts in accordance with the law. There is no crime or punishment except as defined by law. Punishment is personal. The accused is presumed innocent until proved guilty and enjoys all the safeguards needed for the exercise of the right of defence. It is prohibited to inflict physical or psychological harm on an accused or imprisoned person."

40. The Great Green Document on Human Rights in the Age of the Masses, which was promulgated at the General People's Congress in the city of Al-Bayda on Sunday, 27 Shawwal 1397 from the death of the Prophet, corresponding to 12 June 1988, stipulates as follows:

> "The members of the society of the Jamahiriya venerate and protect human freedom and prohibit any restrictions thereon. Detention is imposed only on those whose freedom threatens or undermines that of others ... The society of the Jamahiriya prohibits punishments which detract from human dignity and harm human existence, such as hard labour and long-term imprisonment ... as well as the infliction of physical or psychological harm on the person of a prisoner, and condemns the practices of bargaining over or carrying out experiments on prisoners. Punishment is borne in person by the individual in atonement for the criminal act or deed which gave rise to such punishment and neither the punishment nor its effects are passed on to the family or relatives of the criminal ("No burdened soul shall bear another's burden"). The members of the society of the Jamahiriya prohibit secret operations, the use of any form of force, violence, terrorism or subversion and consider such acts to be a betrayal of the standards and values of the society of the Jamahiriya, which affirms the sovereignty of each individual within the basic people's congress and guarantees his right to express his opinion publicly and openly. They forswear violence as a means of imposing ideas and opinions ... The members of the society of the Jamahiriya venerate and protect human life. It is the intention of the society of the Jamahiriya to abolish capital punishment and, until such time as this is achieved, the death penalty shall apply only to those whose lives threaten or undermine society. The members of the society of the Jamahiriya call for the abolition of atomic, biological and chemical weapons and means of mass destruction and for the elimination of existing stockpiles thereof. They call for the deliverance of mankind from atomic plants and the threat of nuclear waste."

IV. TREATMENT OF PRISONERS

41. Article 1 of the Prisons Act No. 47 of 1975 stipulates that prisons are places of reform and enlightenment. Their purpose is to rectify the conduct of convicted persons through penalties, under the terms of which they are deprived of their liberty and receive training, not in order to torture them but merely to deter them from reverting to their former course of conduct.

The three types of prisons

1. The principal prisons

42. In the principal prisons persons sentenced to the following penalties are confined in accordance with the prison regulations:

(a) The death penalty;

(b) Life imprisonment;

(c) A lesser term of imprisonment.

2. Local prisons

43. Persons sentenced to the following penalties are confined in local prisons:

(a) Detention with hard labour;

(b) Detention, if the convicted person is a repeated offender.

3. Special open and semi-open prisons

44. Persons sentenced to the following penalties are confined in special open and semi-open prisons:

(a) Ordinary imprisonment;

(b) Detention for traffic offences or unintentional offences;

(c) Detention in the case of elderly persons over 60 years of age;

(d) Detention in the case of persons subjected to physical compulsion in accordance with financial judgements.

45. However, it should be borne in mind that these sentences can be served only in legally designated prisons in order to avoid any infringements or violations of the Act.

46. With regard to treatment and conditions of detention, the inmates of each prison are divided into two categories, which are segregated from each other. The first category comprises:

(a) Persons held in preventive detention;

(b) Persons convicted of political offences;

(c) Persons convicted of traffic offences;

(d) Persons sentenced to ordinary imprisonment for the first time;

(e) Elderly convicted persons over 60 years of age;

(f) Convicted persons over 18 but under 21 years of age;

(g) Convicted persons who are subjected to physical compulsion in accordance with financial judgements.

The second category comprises all other types of convicted persons.

47. The right to visits and correspondence is guaranteed under the terms of the Act and prison inmates have the right to correspond and receive visitors in order to avoid any severance of their links with their families, relatives and friends.

Leave of absence

48. The Prisons Act stipulates that a convicted prisoner is entitled to eight days' leave of absence per year, which is granted in separate periods of up to four days on specified conditions. The principal conditions are that the prisoner must have spent one year or more in the prison, that he must be of good conduct, that he must be resident in the Jamahiriya, and that the granting of such leave of absence must not pose a threat to public security. In the event of the death of one of the prisoner's relatives, up to the fourth degree, he is granted emergency leave of absence for a period of 72 hours from which travelling time is not deducted.

Release on parole

49. If a convicted person has served more than three quarters of his sentence and has been of good conduct during his period of imprisonment, he is released on parole and granted a pardon in respect of the remaining quarter of his sentence.

Prisoners' work and wages

50. Under the terms of the Act, convicted prisoners are obliged to work. The purpose of this is to help them to pass time, to provide them with training and to enable them to earn money to support their families. In return for such work, the prisoner is paid a wage in accordance with the following scale:

(a) Seven hundred and fifty dirhams for unskilled work;

(b) One thousand dirhams for skilled work;

(c) Five hundred dirhams for detainees performing unskilled work.

51. This wage differential is attributable to the type of work performed by each category. Every reform institution establishes a committee chaired by the director of the institution and including among its members the institution's medical officer, a member of its social welfare unit and the official responsible for supervising the employment of prisoners in accordance with their individual abilities, skills, predilections and state of health.

Medical care

52. Each reform institution has a resident medical officer assisted by an adequate number of nursing personnel. The medical officer is responsible for all health matters and the director of the institution is obliged to follow his instructions concerning such matters.

Social welfare

53. Each reform institution has a social welfare unit consisting of three or more sociologists, one of whom specializes in the reception of new prisoners while another concerns himself with the training, employment and leisure time of prisoners and the third looks after the external welfare of the prisoners and their families.

Religious counselling

54. Under the terms of the Act, each reform institution must have one or more religious counsellors to undertake the task of encouraging the prisoners to lead a decent, virtuous life and engage in religious observances.

Education

55. Education is compulsory for illiterate prisoners and each prisoner has the right to receive further education if he so wishes.

Administrative and judicial inspections

56. The Act empowers the Secretary of the General People's Committee for Justice to visit and inspect prisons. Administrative officials are not permitted to enter prisons without authorization from the competent Department of Public Prosecutions. The Department of Public Prosecutions has the right to enter the premises of any prison at any time for the following purposes:

(a) To ascertain that court judgements and decisions and orders issued by the examining magistrate and the Department of Public Prosecutions are being executed in the prescribed manner;

(b) To ensure that no person is detained unlawfully;

(c) To ensure that prisoners are classified and treated in the legally prescribed manner;

(d) To examine the records and legal documents in order to ensure that they conform to the prescribed models.